

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TERESA BENNETT, *et al.*,

Plaintiffs,

Case No. 07-14005

v.

Honorable John Corbett O'Meara

MIS CORPORATION, *et al.*,

Defendants.

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**ORDER GRANTING DEFENDANT MIS CORPORATION'S AUGUST 22, 2008  
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT AND  
DENYING AS MOOT PLAINTIFFS' SEPTEMBER 3, 2008 MOTION TO REQUEST  
THE COURT TO DENY DEFENDANT MIS CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on defendant MIS Corporation's August 22, 2008 motion to dismiss and/or for summary judgment. Plaintiffs filed a response September 12, 2008; and MIS filed a reply September 26, 2008. Pursuant to Local Rule 7.1(e)(2), no oral argument was heard.

On August 21, 2008, this court heard oral argument on, and then granted, dispositive motions filed by all defendants except MIS Corporation. The court subsequently filed a written opinion and order addressing those motions September 5, 2008.

Defendant MIS's current motion moves for dismissal of the complaint against it based on the same reason the court granted the motions filed by the other defendants, *i.e.*, the action is barred by the Michigan Supreme Court's decision in Fultz v. Union-Commerce Assocs., 470 Mich. 460 (2004). In the September 5, 2008 opinion and order, this court held that the defendants did not owe Plaintiffs a duty that was separate and distinct from the defendants' contractual obligations with other entities.

The same is true of defendant MIS, and the court hereby incorporates by reference its September 5 order. Accordingly, MIS is entitled to dismissal of Plaintiffs' claims against it.

On September 3, 2008, Plaintiffs filed their Motion to Request the Court to Deny Defendant, MIS Corporation, f/k/a MIS Environmental Services', Motion for Summary Judgment Brought Pursuant to Fed. R. Civ. P. 56, or Alternatively Grant a Continuance to Permit Plaintiffs to Obtain Full Discovery Pursuant to Rule 56(f). Having granted defendant MIS Corporation's motion to dismiss, the court will deny as moot Plaintiffs' September 3, 2008 motion.

**ORDER**

It is hereby **ORDERED** that defendant MIS Corporation's August 22, 2008 motion to dismiss and/or for summary judgment is **GRANTED**.

It is further **ORDERED** that Plaintiffs' September 3, 2008 motion is **DENIED AS MOOT**.

s/John Corbett O'Meara  
United States District Judge

Date: November 10, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, November 10, 2008, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager